

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 763 – SB 724

April 10, 2017

SUMMARY OF ORIGINAL BILL: Requires any private monitoring company, which provides a monitoring program to monitor a participant's alcohol use, drug use, or geographic location either electronically or physically through required in-person checks, testing, screening, global positioning system (GPS) devices, transdermal monitoring devices, and other electronic devices; and to register and become certified by the Department of Commerce and Insurance (TDCI). Requires each owner, operator, or employee of any such company to provide proof that each has submitted to a background check performed by the Tennessee Bureau of Investigation (TBI) and the Federal Bureau of Investigation (FBI), and further requires each company to be bonded, insured, and submit the annual certification fee of \$250 and one-time administration fee of \$1,000.

Creates software and equipment requirements for public and private monitoring companies. Requires the Commissioner of the TDCI, by September 1, 2017, and every September 1 thereafter, to send a list of approved private monitoring companies to the presiding judge of each judicial district. Establishes reporting and notifications requirements for public and private monitoring companies. Requires each judicial district to establish protocols for participants' release into a monitoring program. Allows a participant in a monitoring program to choose between a public or private monitoring company to install and monitor the transdermal or other electronic monitoring device, unless the respective jurisdiction is under contract with a monitoring company.

Establishes that participants in a monitoring program are required to pay all monitoring fees applicable, unless a participant is deemed indigent under Tenn. Code Ann. § 55-10-419, in which case up to \$200 shall be paid, per device, per participant, using funds allocated from the DUI Monitoring Fund. In order for the monitoring company to receive reimbursement from the Fund, a court order and an affidavit of indigency is required to be filled out by the residing court and submitted to the monitoring company.

Requires a public or private monitoring company to pay a \$15 one-time tax for each participant enrolled in its respective monitoring program, of which \$10 will be allocated to the state General Fund and \$5 will be allocated to the DUI Monitoring Fund.

Establishes that a law enforcement officer may arrest any individual who tampers with, removes, or vandalizes a monitoring device, or any person who aids an individual in doing so. This bill will take effect on July 1, 2017.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Revenue –

\$11,300/FY17-18/Department of Commerce & Insurance
\$11,800/FY17-18 and Subsequent Years/General Fund
\$5,900/FY17-18 and Subsequent Years/DUI Monitoring Fund
\$2,300/FY18-19 and Subsequent Years/Department of Commerce &
Insurance

Increase State Expenditures –

\$123,900/FY17-18/General Fund
\$62,700/FY18-19 and Subsequent Years/General Fund

SUMMARY OF AMENDMENTS (006788, 007048): Amendment 006788 deletes and rewrites the bill such that substantive changes include: deletes language that established a period of time that a private monitoring company may be removed from the list of certified private monitoring companies as a result of committing a violation, and replaces it with language authorizing the appropriate court or magistrate to punish a private monitoring company based on the severity of the violation committed, allowing the company the right to attend a hearing and offer evidence proving there was no violation committed or in mitigation of the violation; removes the requirement for a TBI and FBI criminal history background check submission; removes the software and equipment requirements for public and private monitoring companies; removes the \$250 annual certification fee and the one-time nonrefundable \$1,000 administration fee; authorizes the TDCI to set fees by rule; establishes a biennial, rather than annual registration renewal cycle; requires the TDCI to maintain a list of all registered private monitoring companies on its website; removes the \$5 allocation to the General Fund from revenue collected from the \$15 one-time tax imposed on a private monitoring company for each participant enrolled in its respective monitoring program, and establishes that revenue collected from the one-time tax be distributed solely into the DUI Monitoring Fund; defines “private probation services provider” and establishes that any such provider that is under contract with the Department of Correction that will be providing or offering monitoring services on or after July 1, 2017, is required to register with the TDCI; however, such providers are not required to pay the monitoring fee established by the TDCI through rule.

Amendment 007048 deletes and replaces section § 40-40-102 of the bill as amended by amendment 006788, such that the only substantive change exempts the following persons from the requirements set forth in the bill as amended: a person who has been released on probation or parole and is monitored by the Department of Correction (DOC), a person who is required to register as a sexual offender or violent sexual offender and is monitored by the DOC, or a person who has been sentenced to community supervision for life and is monitored by the DOC.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENTS:

Increase State Revenue –

\$93,300/FY17-18/Division of Regulatory Boards

\$93,300/FY18-19/Division of Regulatory Boards

\$62,700/FY19-20 and Subsequent Years/Division of Regulatory Boards

\$17,600/FY17-18 and Subsequent Years/DUI Monitoring Fund

Increase State Expenditures –

\$123,900/FY17-18/Division of Regulatory Boards

\$62,700/FY18-19 and Subsequent Years/Division of Regulatory Boards

\$17,600/FY17-18 and Subsequent Years/DUI Monitoring Fund

Other Fiscal Impact – This note assumes that the TDCI will place this registration program under the Division of Regulatory Boards. Pursuant to Tenn. Code Ann. § 4-29-121, all regulatory boards are required to be self-supporting over any two-year period.

Assumptions for the bill as amended:

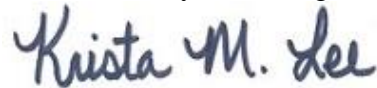
- Pursuant to Tenn. Code Ann. § 55-10-402(h)(7)(A)-(D), a court currently has the authorization, when ordering intensive outpatient treatment, to order a person convicted of a DUI or a drug-related offense to use an transdermal monitoring device with random alcohol or drug testing, global positioning monitoring systems (GPS), or any other electronic device to ensure the person complies with the conditions of probation.
- The cost associated with any individual being required to wear a transdermal monitoring, or other electronic device, will be borne by the individual ordered to wear the device, unless the individual is proven indigent, in which case funds up to \$200 per month may be allocated from the DUI Monitoring Fund to help pay the costs associated with wearing a device; however, in most cases, courts will not require a convicted person to wear any such electronic device unless the convicted person has the means of paying the costs, in whole or in part, associated with the device.
- This legislation will not impact the number of offenders who would otherwise be required to wear an electronic monitoring device.
- This legislation is estimated to result in no significant impact on the current level of funds expended from the DUI Monitoring Fund.
- Based on information previously provided by the Department of Safety, the Board of Parole, the Administrative Office of the Courts, and the Department of the Treasury, this legislation is estimated to have no fiscal impact upon such departments' operations.
- This legislation will require any monitoring company which wishes to provide a monitoring program to register with the TDCI.
- The TDCI will place this registration program under the Division of Regulatory Boards.

- Pursuant to Tenn. Code Ann. § 4-29-121, all regulatory boards are required to be self-supporting over any two- year period.
- The TDCI will establish an initial and biennial registration fee at an amount which offsets the cost of administering the registration program.
- The number of monitoring companies which will register and become certified with the TDCI is unknown.
- It is assumed that larger monitoring companies will seek to operate in multiple counties; therefore, the total number of certified monitoring companies will be relatively small.
- It is assumed that there will be 3 monitoring companies per grand division, or 9 total companies statewide that will register with the TDCI.
- Based on information from the TDCI, it will require one additional regulatory board investigator position to fulfill the requirements of this legislation.
- The recurring increase in state expenditures is estimated to be \$62,730 (salary \$40,400 + benefits \$10,539 + FICA \$3,091 + vehicle-related costs \$4,500 + office lease \$2,200 + phone/network \$1,400 + supplies \$600).
- There will be one-time costs of \$38,400 (320 hours x \$120 per hour) to update the CORE licensing system, \$18,000 for a vehicle, \$2,000 for office furniture, \$1,300 for a computer, and \$1,500 for one rulemaking hearing (court reporter \$500 + transcript copies \$1,000), for total one-time costs estimated to be \$61,200.
- The total increase in state expenditures from the Division of Regulatory Boards for FY17-18 is estimated to be \$123,930 (\$62,730 + \$61,200); the recurring increase in state expenditures from the Division of Regulatory Boards, beginning in FY18-19 is estimated to be \$62,730.
- In order to be self-supporting and under the assumption that 9 companies will register, the initial registration fee for first biennial registration cycle of FY17-18 through FY18-19 will need to be set at \$20,740. This amount will cover the recurring and one-time costs estimated to be incurred by the Division of Regulatory Boards in the administration of this program.
- In all subsequent biennial registration cycles, the registration fee will be set at \$13,940.
- An increase in state revenue to the Division of Regulatory Boards in FY17-18 of \$186,660 (9 x \$20,740).
- Annualized, a recurring increase in state revenue to the Division of Regulatory Boards in each FY17-18 and FY18-19 of \$93,330 (\$186,660 / 2-year license).
- An increase in state revenue to the Division of Regulatory Boards in FY19-20 of \$125,460 (9 x \$13,940).
- Annualized, a recurring increase in state revenue to the Division of Regulatory Boards in FY19-20 and subsequent years of \$62,730 (\$125,460 / 2-year license).
- This legislation requires that each monitoring company pay a one-time fee of \$15 to the state per participant in the company's respective monitoring program.
- This \$15 fee is required to be allocated to the DUI Monitoring Fund.
- Based on information provided by the Department of Treasury, there are currently 121 participants in electronic monitoring programs in Davidson County.
- According to the U.S. Census Bureau, Davidson County's 2015 population was estimated to be 678,889.

- Approximately 0.017823 percent (121 / 678,889) of the Davidson County population participates in electronic monitoring programs.
- According to the U.S. Census Bureau, Tennessee's 2015 population was estimated to be 6,600,299.
- It is estimated that there will be 1,176 (6,600,299 x 0.017823%) individuals participating in the program each year for which the tax will apply.
- A recurring increase in DUI Monitoring Fund revenue of \$17,640 (1,176 x \$15) beginning in FY17-18.
- It is assumed that all revenue collected and allocated to DUI Monitoring Fund will be expended to effectuate the provisions established by the bill as amended.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in blue ink that reads "Krista M. Lee". The signature is written in a cursive, flowing style.

Krista M. Lee, Executive Director

/jdb